

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

(petitioner)

DECISION

MRA-65/50718

PRELIMINARY RECITALS

Pursuant to a petition filed October 1, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Washburn County Dept. of Social Services in regard to medical assistance, a hearing was held on November 15, 2001, at Shell Lake, Wisconsin.

The issue for determination is whether the county agency properly determined the income of the petitioner's spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Janice Kling, ESS
Washburn County Dept Of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Washburn County.
2. The petitioner lives in a medical institution. His spouse lives in the community.
3. The petitioner's unearned income is \$1963.48 per month.
4. The petitioner's spouse works at a job where her hours fluctuate. Her average monthly income is \$857.10 per month.
5. The county agency determined that the petitioner's spouse is entitled to an allowance of \$1,317.90 from her husband and that he must contribute \$600.58 toward his medical expenses.

6. The petitioner contends that the county agency has overstated his spouse's monthly income, which causes her spousal impoverishment allowance to be too low.

DISCUSSION

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." §HFS 103.07(1)(d), Wis. Adm. Code. Both Wisconsin and federal medical assistance laws have an exception to this rule that allows some of an institutionalized person's income go to his spouse so that she does not fall into poverty. See §49.455, Stats., and 42 U.S.C. §13964-5. The community spouse – the spouse that is still living at home – is allowed enough from the institutionalized person income to bring her own income up to the lesser of \$2,175 or \$1,875 plus an excess shelter allowance, which is any shelter cost over \$562.50. *MA Handbook*, Appendix, §23.6.0. The parties agree that the petitioner's spouse requires the full \$2,175 per month to live on. Therefore, she is entitled to as much of the petitioner's income as is necessary to raise her own income to this amount. The parties also agree that the petitioner's income from a pension and social security is \$1963.48. They disagree on the county's determination that the spouse earns \$857.10 per month, which would entitle her to \$1,317.90 from her husband's income to bring her up to \$2,175 per month.

Income is determined by using the best information available to obtain the best estimate of the recipient's prospective income. *BWI Operations Memo*, 97-113, October 31, 1997, p.3. The county agency, relying upon the spouse's recent pay stubs, assumes that she works 35 hours per two-week pay period and earns \$11.39 per hour. It multiplied her biweekly total by 2.15 to obtain the \$857.10 per month. The spouse states that her income fluctuates and that the county overstated her income. She submitted pay stubs from September and October that contained year to date earnings. According to her stub for the pay period ending October 20, 2001, her 2001 earnings to that point were \$9,477.72. *Exhibit 1*. Because this reflects what the spouse earned in slightly less than 10 months, her monthly earnings for the year are slightly more than one-tenth of \$9,477.72, or slightly more than \$947.77. This amount is greater than what the county found, so it is in her interest to use the county's estimate of his spouse's income. I will give the spouse the benefit of a doubt and assume that the more recent information used by the county agency more accurately reflects her current income than would an average for the entire year. If I did not do this I would have to remand this matter to the county with instructions to reduce her allowance from her husband below what it is now. Because the county correctly determined the spouse's income, and because the parties agree on all other issues, the county agency correctly determined the spousal allowance and the petitioner's share of his medical costs.

CONCLUSIONS OF LAW

1. The county agency correctly determined that the petitioner's spouse earns \$857.10 per month.
2. The county agency correctly determined the petitioner's spouse is entitled to \$1,317.90 of her husband's income under the spousal impoverishment provisions of the medical assistance program.
3. The county agency correctly determined that the petitioner's share of his medical costs is \$600.58.

NOW, THEREFORE, it is

ORDERED

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 4th day of
December, 2002.

/s Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
27/MDO